

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:)	Chapter 11
CIRCUIT CITY STORES, INC.)	Case No. 08-35653-KRH
Debtor.)	
)	
US SIGNS, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	
CIRCUIT CITY STORES, INC.)	
)	
Defendant.)	

NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY

US SIGNS, INC., by undersigned counsel, has filed a Motion with the Court seeking relief from the automatic stay of 11 U.S.C. § 362(a) to permit it to proceed in the appropriate New Jersey County with a Mechanic's Lien claim pursuant to New Jersey Construction Lien Law.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then on or before December 18, 2008, you or your attorney must:

X File with the Court, located at 701 East Broad Street, Suite 4000, Richmond, Virginia 23219, a written response with supporting memorandum as required by Local Bankruptcy Rule 9013-1(H). **Unless a written response and supporting memorandum are filed and served by the aforementioned day, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.** If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of this period. You must **also** mail a copy to the persons listed below.

X Attend the hearing scheduled to be held on December 22, 2008, at 10:00 a.m. in Courtroom 5000, (or the courtroom to which Judge Huennekens's cases have been assigned) in the United States Bankruptcy Court for the Eastern District of Virginia, 701 East Broad Street, Suite 4000, Richmond, Virginia 23219. **If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing.**

X A copy of any written response must be mailed to the following persons:

Richard I. Hutson, Esq.
Fullerton & Knowles, P.C.
12644 Chapel Road, Suite 206
Clifton, VA 20124
rhutson@fullertonlaw.com
Counsel for US Signs, Inc.

Office of the U.S. Trustee
701 E. Broad St.
Suite 4304
Richmond, Virginia 23219-1888
Attn: Robert B. Van Arsdale
The United States Trustee

Skadden, Arps, Slate, Meagher
& Flom, LLP
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
Attn: Gregg M. Galardi, Esq.

Skadden, Arps, Slate, Meagher
& Flom, LLP
333 West Wacker Drive
Chicago, Illinois 60606
Attn: Chris L. Dickerson, Esq.

McGuireWoods LLP
One James Center
901 E. Cary St.
Richmond, VA 23219
Attn: Dion W. Hayes, Esq.

Counsel for the Debtors and Debtors in Possession

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

This the 9th day of December, 2008.

/S/ Richard I. Hutson

Richard I. Hutson, Esq.

VS# 71097

Fullerton & Knowles, P.C.

12644 Chapel Road, Suite 206

Clifton, VA 20124

(703) 818-2600

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Counsel for US Signs, Inc.

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Defendant.)	

MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW the Plaintiff, US Signs, Inc. (hereinafter "US Signs" or "Plaintiff"), by counsel, and in support of its Motion for Relief from Automatic Stay respectfully states as follows:

Richard I. Hutson, Esq., VSB# 71097
Fullerton & Knowles, P.C.
12644 Chapel Road, Suite # 206
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(703) 818-2600
FAX: (703) 818-2602
rhutson@fullertonlaw.com
Counsel for US Signs, Inc.

1. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 362.

2. The Court approved Case Management Procedures by order dated November 12, 2008, titled "Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures" (the "Order"), which governs this adversary proceeding.

3. US Signs is a Texas corporation engaged in business as a national full service sign company.

4. Upon information and belief, Defendant/Debtor Circuit City Stores, Inc. (hereinafter referred to as "Circuit") is engaged in business in the Commonwealth of Virginia as an electronics retailer.

5. Circuit, as Owner, entered into an open account agreement (hereinafter referred to as "the Contract") with US Signs (hereinafter collectively referred to as "Owner") whereby US Signs agreed to manufacture, supply and install signs for Circuit and Circuit agreed to pay for said labor or materials (hereinafter referred to as the "Work") necessary to construct signs at Circuit City retail store # 4133 located at 1200 U.S. Route 22, N. Plainfield, NJ 07060 (hereinafter referred to as the "Project"). True and accurate copies of the Purchase Orders are attached hereto as Exhibit A and incorporated herein by reference.

6. Pursuant to the Contract, US Signs provided substantial Work which was incorporated into the Project and added substantial value thereto.

7. Circuit breached the Contract by failing or refusing to pay a balance due to US Signs for Work supplied to Circuit.

8. The reasonable value of the Work supplied by US Signs is \$68,058.77 in excess of payments received as evidenced by the Invoices ("Invoices") attached hereto as an Exhibit B.

9. All Work was supplied no later than October 3, 2008.

10. Circuit filed its Bankruptcy Petition under Chapter 11 of the Bankruptcy Code in this Court on or about November 10, 2008.

11. Under New Jersey Law, any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract with an owner, general contractor or subcontractor, shall be entitled to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the contract (hereinafter referred to as "NJ Construction Lien Law"). *See* N.J.S.A. § 2A:44A-3.

12. A NJ Construction Lien Law claim must be filed not later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. *See* N.J.S.A. § 2A:44A-6.

13. US Signs is still within the statutory 90 period under NJ Construction Lien Law to file a Mechanic's Lien for the total sum of \$68,058.77 owed by Circuit for Work supplied to the Project.

14. Bankruptcy Code § 362 operates as an automatic stay on actions against the debtor to create, perfect or enforce any lien against property of the debtor's estate to the extent such lien secures a claim that arose before debtor's bankruptcy petition. *See* 11 U.S.C. § 362(a)(5).

15. Cause exists to lift the automatic stay.

16. US Signs must file its Mechanic's Lien by January 3, 2009 in order to preserve its rights pursuant to NJ Construction Lien Law.

17. US Signs must also file suit in the appropriate New Jersey County court to

determine the amount, validity, and priority of its Mechanic's Lien by October 2, 2009.

18. New Jersey law controls the amount, validity, and priority of US Signs' Mechanic's Lien rights and US Signs' status as a secured creditor. Under New Jersey law, US Signs has a secured lien status which is prior to any lien not first recorded, except a mortgage to the extent of the value of the land purchased. See N.J.S.A. § 2A:44A-10.

19. If US Signs is granted relief from the stay, US Signs will seek to enforce its Mechanic's Lien rights under New Jersey law by filing a Mechanic's Lien claim with the clerk's office in the appropriate New Jersey County, and filing and prosecuting its Complaint to determine the amount, validity, and priority of its Mechanic's Lien.

20. US Signs will not seek to seek to foreclose upon or sell said Project without seeking further leave from this Court to do so, for so long as the Petition under Chapter 11 herein is pending or the stay, as modified herein, is otherwise in effect. US Signs will seek only to establish its status as a secured creditor under New Jersey state law.

21. US Signs will be irreparably harmed without relief from the automatic stay and would be prevented from properly enforcing its Mechanic's Lien rights under New Jersey law.

WHEREFORE, Plaintiff, US Signs, Inc., prays that the automatic stay herein be modified so as to allow the Plaintiff to file a Mechanic's Lien claim with the clerk's office in the appropriate New Jersey County and to file and prosecute its Complaint to determine the amount, validity, and priority of its Mechanic's Lien.

US SIGNS, INC.
By Counsel

/S/ Richard I. Hutson
Richard I. Hutson, Esq.
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Counsel for US Signs, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Relief from Automatic Stay, Notice and Proposed Order were sent via first class mail, postage prepaid, to the following on this, the 9th day of December 2008:

Office of the U.S. Trustee
701 E. Broad St.
Suite 4304
Richmond, Virginia 23219-1888
Attn: Robert B. Van Arsdale
The United States Trustee

Skadden, Arps, Slate, Meagher
& Flom, LLP
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
Attn: Gregg M. Galardi, Esq.

Skadden, Arps, Slate, Meagher
& Flom, LLP
333 West Wacker Drive
Chicago, Illinois 60606
Attn: Chris L. Dickerson, Esq.

McGuireWoods LLP
One James Center
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Richmond, VA 23219
Attn: Dion W. Hayes, Esq.

Counsel for the Debtors and Debtors in Possession

/S/ Richard I. Hutson
Richard I. Hutson, Esq.

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ORDER GRANTING PLAINTIFF RELIEF FROM AUTOMATIC STAY

THIS CAUSE came on this day to be heard upon the Motion of the Plaintiff, US
Signs, Inc. for Relief from the automatic stay, and

Richard I. Hutson, VSB# 71097
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Counsel for US Signs, Inc.

IT APPEARING TO THE COURT that cause for Relief from the automatic stay has been shown, it is hereby

ADJUDGED, ORDERED AND DECREED that the automatic stay pursuant to 11 U.S.C. § 362(a) is hereby modified as to US Signs, Inc., and US Signs, Inc. is permitted to file and prosecute prosecuting a Mechanic's Lien claim with the clerk's office in the appropriate New Jersey County against the Property known as Circuit City retail store # 4133 located at 1200 U.S. Route 22, N. Plainfield, NJ 07060; and

THIS CAUSE IS ENDED.

ENTERED this _____ day of _____, 200__.

U.S. Bankruptcy Court Judge

I ASK FOR THIS:

/S/ Richard I. Hutson

Richard I. Hutson, Esq.

VSB# 71097

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Copies to:

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